



WISCONSIN SUPREME COURT
Tuesday, January 21, 2003
10:45 a.m.

00-3403-CR State v. Nancy Lamon

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), which affirmed a conviction in Rock County Circuit Court, Judge Edwin C. Dahlberg presiding.

In this case, the Wisconsin Supreme Court will decide whether a prosecutor discriminated against an African-American defendant by striking the only black person from the jury panel. Striking potential jurors solely because of their race is prohibited by a U.S. Supreme Court decision called Batson v Kentucky.¹

Here is the background: Nancy Lamon, who is black, was prosecuted for armed robbery and the case was set for a jury trial. In the process of selecting a jury (known as *voir dire*), the prosecutor used her first peremptory strike to remove Dondre Bell, the only African-American in the jury pool. Lamon's attorney objected to this and, in a session conducted in the judge's chambers, the judge asked the prosecutor why she struck Bell. She said that her office had prosecuted a number of people with the last name Bell who lived in Beloit, that Bell's home address was in a high-crime area, and that the police had been called to his home many times for various reasons. This knowledge, she said, made her suspect that Bell was being deceptive when he did not raise his hand when she asked whether any member of the panel had been a victim of crime or had a close relative or friend who had been a victim, or had had contact with the Rock County District Attorney's Office in any capacity. In addition, Bell's response on his juror questionnaire to the question about his employment over the last five years – "varies" – made the prosecutor question his ability to be a responsible juror.

In response, Lamon's attorney argued that Bell is a common name and that the prosecutor could have questioned him specifically about whether he was related to the crime family or whether he had been involved in any of the police contacts at his home (it was not known how long he had lived there and there were others living at that address). The prosecutor indicated that she had not wanted to single him out for questioning. The judge found that the prosecutor had demonstrated that she had struck Bell for acceptable, race-neutral reasons.

The case proceeded, and Lamon was ultimately convicted. She appealed, arguing that she had not been judged by a jury of her peers. The Court of Appeals affirmed the conviction, finding that the prosecutor "offered plausible reasons supporting her decisions to strike that juror." While the appellate court noted that the prosecutor might

¹ 476 U.S. 84 (1986). Batson sets out how allegations of discrimination in jury selection are to be assessed. First, the defendant must show that s/he is a member of a specific group and that the prosecutor has used peremptory challenges to remove the members of that group. If that is done, then the State must provide an explanation for the strikes that demonstrates that they were not racially motivated. If the State provides such an explanation, the burden then shifts to the defendant to persuade the trial court that the prosecutor did, in fact, act on the basis of race.

have been able to satisfy her concerns by questioning Bell rather than striking him, it found that the trial judge was acting within his authority to accept the prosecutor's explanation that she hadn't wanted to single out Bell.

The Supreme Court will decide whether the prosecutor acted appropriately. It will also decide whether the Court of Appeals acted properly in deferring to the trial judge's finding that the strike was appropriate when the trial judge had not actually questioned Bell to assess his credibility.